STATUTORY INSTRUMENTS

1979 No. 375

SOCIAL SECURITY

The Social Security (Attendance Allowance) Amendment Regulations 1979

Made - - - -	*27th March* 1979
Laid before Parliament	*30th March* 1979
Coming into Operation	*2nd April* 1979

The Secretary of State for Social Services, in exercise of powers conferred on him by section 35(2)(*b*), (2A) and (5A) of the Social Security Act 1975(**a**) and of all other powers enabling him in that behalf, hereby makes the following regulations which relate only to matters which, in accordance with that Act, have been referred to the Attendance Allowance Board and which accordingly, by virtue of section 139(2) and paragraph 16 of Schedule 15, are not subject to the requirements of section 139(1) for prior consultation with the National Insurance Advisory Committee.

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Social Security (Attendance Allowance) Amendment Regulations 1979 and shall come into operation on 2nd April 1979.

(2) In these regulations, unless the context otherwise requires, "the principal regulations" means the Social Security (Attendance Allowance) (No. 2) Regulations 1975(**b**).

Addition to principal regulations

2. Immediately after regulation 5 of the principal regulations there shall be inserted a new Part III A to those regulations, which Part is set out in the Schedule to these regulations.

David Ennals,
Secretary of State for Social Services.

27th March 1979.

(**a**) 1975 c. 14; section 35 was amended by section 2 of the Social Security Act 1979 (c. 18).
(**b**) S.I. 1975/598, to which there are amendments not affecting the subject of these regulations.

SCHEDULE *Regulation 2*

Part III A inserted in the principal regulations by regulation 2

PART III A

RE-QUALIFICATION AND RENAL DIALYSIS

Qualifying period for entitlement to an allowance after an interval of non-entitlement

5A.—(1) This regulation has effect in respect of a claim for attendance allowance where for a period immediately preceding the date of the claim, either—

(*a*) there was not in force a certificate issued under section 35(2) of the Act (period for which an allowance is payable), and the Board consider that the person in respect of whom the claim is made has satisfied or is likely to satisfy either or both of the conditions specified in section 35(1) of the Act (the day and night conditions) for a period of at least 6 months beginning not more than 2 years after a period during which there was in force a certificate under section 35(2) in respect of that person; or

(*b*) such a certificate was in force but it did not state that both the conditions specified in section 35(1) were satisfied and the Board consider that the person in respect of whom the claim is made has satisfied or is likely to satisfy both the conditions specified in section 35(1) for a period of at least 6 months beginning not more than 2 years after a period during which there was in force a certificate under section 35(2) in respect of that person stating that both the conditions specified in section 35(1) were satisfied.

(2) In a case to which this regulation applies the period prescribed under section 35(2)(*b*) of the Act (condition that a qualifying period of not less than 6 months must precede the period for which the Board may issue a certificate), for the purpose of allowing and setting a limit to an interval between the qualifying period and that for which the Board determine that the person concerned again satisfies or is likely to satisfy the conditions applicable under section 35(2)(*a*), is 2 years.

Dialysis prescribed for purpose of a person's satisfying one of the conditions for an allowance

5B.—(1) In the case of a person suffering from renal failure, treatment by way of renal dialysis administered regularly for two or more sessions a week, in the course of which and as a result of which he requires from another person attention in connection with his bodily functions or supervision in order to avoid substantial danger to himself, is hereby prescribed under section 35(2A) of the Act (persons deemed to satisfy conditions for an allowance) to the extent indicated in paragraph (2).

(2) In a period throughout which a person undergoes or is expected to undergo treatment prescribed by this regulation he shall be deemed to satisfy or to be likely to satisfy one of the two conditions mentioned in section 35(1) (day condition and night condition) for the purposes of—

(*a*) if regulation 5C applies to him in the period in question, section 35(2)(*b*) (qualifying period), or

(*b*) in any other case, section 35(2) (period for which an allowance is payable).

Persons dialysing as NHS out-patients deemed not to satisfy conditions for an allowance

5C.—(1) This regulation has effect where a person suffering from renal failure undergoes or is expected to undergo treatment by way of renal dialysis as an out-patient in a hospital or in an institution treated as a hospital, being treatment under the National Health Service Act 1977**(a)** or under the National Health Service (Scotland) Act 1978**(b)**.

(2) Where this regulation has effect, for the purpose of section 35(2)(*a*) (conditions to be satisfied in a period for which a certificate is issued), the person concerned shall be deemed not, by virtue of attendance requirements occasioned by treatment referred

(a) 1977 c. 49. **(b)** 1978 c. 29.

to in paragraph (1), to satisfy either of the conditions mentioned in section 35(1), but without prejudice to the application of section 35(2)(*b*) (qualifying period) or to any rights under section 35 with respect to attendance requirements arising from any cause other than such treatment.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which are made under powers conferred by section 35 of the Social Security Act 1975 as amended by the Social Security Act 1979, amend the Social Security (Attendance Allowance) (No. 2) Regulations 1975 and come into operation on 2nd April 1979. Regulation 2 and the Schedule insert a new Part III A in the Regulations of 1975 consisting of regulations 5A, 5B and 5C.

Under section 35 of the Social Security Act 1975 entitlement to attendance allowance depends on satisfying conditions, set out in subsection (1), both as respects the period for which an allowance is claimed and a 6 months' qualifying period preceding it. Where a certificate was issued showing these conditions to have been satisfied as respects an earlier claim, regulation 5A allows a gap of up to 2 years to intervene between the qualifying period and the new period with respect to which the Attendance Allowance Board determine that attendance conditions are, or are likely to be, again satisfied.

Regulations 5B and 5C (to be inserted in the 1975 Regulations) apply to persons suffering from renal failure who are undergoing renal dialysis. Regulation 5B prescribes that if dialysis takes place regularly twice a week it is deemed to satisfy one of the two conditions mentioned in section 35(1) for the purpose of the qualifying period and, except where regulation 5C applies, for the purpose of determining the period for which there is entitlement to an allowance. Regulation 5C provides that where dialysis is administered to a person as out-patient treatment under the National Health Service in a hospital or similar institution he is deemed not to satisfy either of the conditions for an allowance, but this applies only to the period for which an allowance is claimed—not the qualifying period—and the regulation does not affect rights respecting attendance requirements due to causes other than renal dialysis.

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